

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

**FILED**  
March 27, 1998  
Cecil W. Crowson  
Appellate Court Clerk

BETTY A. PRIMM,	)	
	)	
Plaintiff/Appellee	)	MARSHALL CIRCUIT
	)	
v.	)	NO. 01S01-9705-CV-00120
	)	
KANTUS CORPORATION and	)	HON. LEE RUSSELL
THE YASUDA FIRE & MARINE	)	JUDGE
INS. CO. OF AMERICA,	)	
	)	REVERSED and
Defendants/Appellants	)	DISMISSED.

**For the Appellants:**

**For the Appellees:**

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**MEMORANDUM OPINION**

**Members of Panel:**

Justice Lyle Reid  
Senior Judge William H. Inman  
Special Judge Joe C. Loser, Jr.

**REVERSED and  
DISMISSED**

**INMAN, Senior Judge**

This workers' compensation appeal has been referred to the Special

Workers' Compensation Appeals Panel of the Supreme Court in accordance with T.C.A. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Appellate review requires that we presume that the judgment of the trial court is correct. RULE 13(d), T. R. A. P. We indulge no other presumptions, but look to see where the preponderance of the evidence lies. T.C.A. § 50-6-225(e)(2). It is axiomatic that the essential elements of a workers' compensation case, like any other, must be proved, and that the plaintiff must bear the burden of proof. There are no presumptions at the trial level. *See, Tindall v. Waring Park Ass'n.*, 725 S.W.2d 935 (Tenn. 1987). While we do not substitute our judgment for that of the trial judge, we are as well positioned to judge the probative worth of depositional testimony. *Cooper v. INA*, 884 S.W.2d 446 (Tenn. 1994).

The trial court found that the plaintiff sustained a job-related injury to her central nervous system and psychological injury as a direct result of exposure to Hexane in the work place and that she was totally and permanently disabled as a result. We find that the evidence preponderates against the judgment and accordingly reverse and dismiss. RULE 13(d), T. R. A. P.

## I

The complaint alleged that in April, 1993 the plaintiff “discovered that she was experiencing health problems as a result of her exposure to Hexane,” and that on “October 1, 1993 was released from work.” She alleged that she was “permanently disabled resulting in permanent impairment.” She made *no allegation with respect to the nature of the impairment or disability.*

The defendants responded that they had insufficient information with which to admit or deny the various averments, and demanded “strict proof.”

## II

The plaintiff is 62 years old, a high school graduate with two years' attendance at a business college. She has held various jobs, and began her employment with Kantus Corporation in 1989, 'trimming knee boosters' for car dashboards. In 1990, she was assigned to "100% final audit," the last inspection before the product was delivered to Nissan, which required that the pads be cleaned with a solvent containing Hexane. She performed this job wearing gloves, and in an open room with 80 fellow employees.

On some unspecified date, she testified that "I would be dizzy, numb. I couldn't work, I would have to hold onto the walls to get out of the department to go to lunch or go to my car to go home. I had headaches, and the pain was so unreal . . . all over the body. I had a specific pain complaint about my arms, hand and shoulder . . ." She testified to a loss of memory, and about the difficulties she encountered in performing household chores.

On cross-examination, she said that some of the pain went away when she saw Dr. Arney [a psychiatrist], who prescribed Prozac, which she has been taking three (3) times a day for a year, as of the date of trial.<sup>1</sup>

The plaintiff reported her health problems to the workers' compensation department of her employer, which was apparently supervised by her daughter-in-law, Denise Primm, who had, at trial time, a suit pending for workers' compensation benefits for mental stress.

The plaintiff has seen a veritable litany of experts. The record is somewhat unclear as to the number, but they include Drs. Cook, Gaw,

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<sup>1</sup>Prozac is an antidepressant for oral administration. It is not a controlled substance. *Anxiety, nervousness, and insomnia* are often reported by patients treated with Prozac. *Significant weight loss* may occur. It may interfere with *cognitive and motor functions*, since any psycho active drug may impair judgment, thinking or motor skills. Patients are cautioned about *driving automobiles* while taking Prozac. The most commonly observed adverse events associated with the use of Prozac are *nervous system complaints, anxiety, nervousness, insomnia, drowsiness, fatigue, tremor, sweating, gastrointestinal complaints, anorexia, nausea, and diarrhea, dizziness and light-headedness*. *Physicians' Desk Reference*, 49th Ed., 1995.

Simmons, Lisella, Bluhm, Gray, Arney and Hollister, among others. The record is replete with depositions of these experts, whose testimony will be considered in course. The defendants concede that exposure to chemicals during the course of employment which results in injury is compensable under the workers' compensation law. The dispositive issue is whether the preponderant, probative evidence establishes a causal connection between the physical and mental complaints and the workplace.

**Dr. Jerry Simmons**

\_\_\_\_\_Dr. Simmons is the Director of the Division of Occupational and Environmental Medicine at Meharry Medical College, from which he was graduated in 1979. He is not board-certified. He initially saw the plaintiff on December 3, 1992, at the request of her daughter.

The plaintiff was complaining of headaches, and numbness in her right hand. The examination was normal, but he thought a neurological examination was indicated, "since I couldn't find anything concrete," and referred her to a neurologist, Dr. Lisella, who reported *that there were no abnormal nerves or other damage to the nerves.*

Dr. Simmons saw her again on December 17, 1992, and recommended that she not work with Hexane for six months, because, as he understood, Hexane is a neurological solvent that has been associated with nerve disorders and cognitive dysfunctions. In February 1993, Dr. Simmons saw the plaintiff for the third time. Her chief complaint at that time was muscle pain in the area of the right collar bone. He prescribed no medication and imposed no work restrictions. He saw her the fourth time on February 18, 1993, when he discussed the results of her lab work. He also did a chest x-ray. When asked, "Did you discover any abnormalities in the musculoskeletal system that would

attribute to the symptoms she was displaying?” he replied that he did not.

Dr. Simmons saw the plaintiff for the fifth time on August 12, 1993, when she reported that her muscular aches and pains “are just about gone.”

She then related to Dr. Simmons that she had suffered another chemical exposure, the nature of which he was uncertain.

Because the plaintiff was “still complaining of symptoms,” Dr. Simmons referred her to a neuropsychologist, notwithstanding that she had been evaluated, at Dr. Simmons’ request, by a neurologist, Dr. Lisella, who, as previously stated, found no basis for the plaintiff’s complaints. The neuropsychologist,<sup>2</sup> Dr. Gray, saw her on March 31, 1994, but in the meantime, on March 3, 1994, Dr. Simmons saw her for the sixth time. He then had the benefit of Dr. Lisella’s studies, which revealed no nerve problems, but he wanted to know if there were any cortical dysfunctions involved.<sup>3</sup> Dr. Simmons had keyed on Hezane as the possible cause of the plaintiff’s problems, and he “was trying to rule out the occupational causes.”

Dr. Simmons next saw the plaintiff for the seventh and last time, on April 28, 1994, following the receipt of the report from Dr. Gray, who opined that the plaintiff had “higher cortical residuals which were associated with individuals who were exposed to various solvents, particularly Hexane. He said that one of the symptoms of exposure was loss of memory, *but that microvasculr problems produce the same symptoms.* To rule out microvascular problems, an MRI or a CAT scan is indicated, he said, and a CAT scan was performed, which was negative for microvascular changes.

He then testified that “it is my opinion that Hexane played a part in

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<sup>2</sup>Neuropsychology is psychology related to neurology, It is concerned with the relationship between the nervous system and behavior, and is a latter-day discipline.

<sup>3</sup>The cortex is the outer layer of gray matter over most of the brain.

producing the symptoms that she's experiencing right now.”

At this juncture, counsel for the defendant objected on the ground that Dr. Simmons had not been qualified as an expert in the field.

Dr. Simmons continued his testimony - perhaps reacting to the objection - thusly:

“ . . . I think it's possible that Hexane may have played a part . . . ”

Dr. Simmons was not qualified as an expert in toxicity and the objection to his opinion should have been sustained.

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**Dr. Casey Arney**

Dr. Arney is a psychiatrist, to whom the plaintiff was referred by Dr. Simmons for evaluation of her symptoms of depression. She had marked symptoms, according to Dr. Arney, who described “a great deal of conflict between she [sic: her] and her employer regarding [exposure to a solvent] and that her symptoms came up during this exposure and conflict.” She related her alleged exposure to Hexane to Dr. Arney. Thereafter, her depression improved, but because she evinced some signs of chronicity, he prescribed Prozac. He last saw her on January 2, 1996. She continued to have problems with concentration, memory, and anxiety.<sup>4</sup> He expressed no opinion about her memory problems, and relied on the report of Dr. Gray, and testified:

Q: “With a degree of medical certainty can you ascertain whether or not the conditions that Mrs. Primm is displaying to you can be related to chemical toxication?”

A: I can say that what she presented to me [is] that the stresses that have brought on her depression are related to the events and conflict with her employer regarding the use of solvents at her job.”

He conceded that he knew nothing of toxicology and that his opinion

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<sup>4</sup>Which, according to the literature, is, or may be, a side effect of Prozac.

was based on what the plaintiff related to him about working with solvents.

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**Dr. Edward M. Karl**

Dr. Karl is a pathologist, not board-certified. He was asked by plaintiff's counsel to research Hexane. Dr. Karl read certain literature, which revealed "that most of the studies are done on animals." He knew nothing of the toxicity of Hexane ["last time I saw Hexane was probably organic chemistry in college"], and conceded that by any standard he did not consider himself an expert on Hexane effects on human beings.

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**Dr. Maurice Knuckles**

Dr. Knuckles is an "Environmental Toxicologist by training, an Industrial Hygienist by training, and Environmental Health Scientist by training," employed by Meharry Medical College. He holds a Bachelor's Degree in Environmental Health, a Master of Science in Public Health, a Master of Science in Industrial Hygiene, and a Ph.D. in Toxicology. He pursued post-doctoral studies at the University of Alabama in Toxicology, particularly the effects of Hexane. Later, he taught "Toxicology of Various Solvents" at Illinois State University. At Meharry, he is a "researcher first and foremost."

Dr. Knuckles described Hexane as a colorless, volatile liquid that is aliphatic, commonly used as a solvent or glue. Acute exposure is normally accompanied by high concentrations which result in asphyxia leading to cardiac arrest or brain damage. He described less acute exposures resulting in nausea, dizziness, etc. He said that the principal neurological effects associated with Hexane are peripheral neuropathies, meaning that the chemical tends to react to or affect the myelin sheath of the long axons, by causing it to "die back," resulting in muscle weakness and impaired gait. Under moderate

conditions all of these symptoms will resolve.

He testified that “Hexane in and of itself is not though to be the primry item that causes peripheral neuropathy.” He further testified:

Q: “Is there any evidence that exposure to n-Hexane produces any pulmonary damage after inhalation by human beings?”

A: That has not been the case in the literature.

Q: Is there any evidence that exposure to n-Hexane produces any behavioral or psychological effects in humans?

A: *I have searched the literature thoroughly in this matter and I hve not found anything to suggest that that is the case.*”

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**Dr. M. Robert Weiss**

Dr. Weiss is board-certified as a neurological surgeon. he initially saw the plaintiff on July 19, 1996 for purposes of evaluation. He testified that she had a normal neurologic examination, as did Dr. Richard Belden, a radiologist at St. Thomas Hospital. he knows nothing of the chemical toxicology of Hexane, but said the plaintiff had no signs or evidence of “neurosurgical [sic: neurological] disease. He emphasized that Mrs. Primm “has a normal neurological examination, no objective physical findings and certainly no neurological problems.”

He testified that an MRI revealed small multiple lacunes, representing microinfarcts from small vessel disease, but knew of no evidence that these would be related to Hexane exposure. He said that a microinfarct was “a small, tiny stroke,” and that the infarcts are small areas of the brain that have died as a result of small vessel disease. Significantly, Dr. Weiss testified that

*“I thought this woman was exceedingly specific in events, no obvious evidence of difficulties either with her speech or conversation with me or even relating details of her current lawsuit over the last couple of years . . . She was pretty conversant, and I detected no obvious memory or lucidity problems.”*

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**Dr. Renata Bluhm**

Dr. Bluhm holds a Doctor of Medicine degree and a Ph.D. in Pharmacology and Toxicology. She is board-certified in Internal Medicine. On March 25, 1993, she interviewed and examined the plaintiff at the request of Dr. Simmons.<sup>5</sup>

She received the plaintiff's history of complaints, and testified that "it may be beneficial to evaluate her for the possibility of musculoskeletal disease of the cervical and/or lumbar spine," and that

*"She would benefit from reassurance that she has not developed a degenerative disease from Hexane exposure."*<sup>6</sup>

\_\_\_\_\_The report of Dr. Bluhm was forwarded to Dr. Simmons, who shared it with the plaintiff, apparently displeasing her, because she called *Dr. Bluhm and demanded that the report be suppressed*. Parenthetically, Dr. Simmons, who referred the plaintiff to Dr. Bluhm, apparently did not like her report, since he apparently acquiesced in the suppression of it. Dr. Bluhm thereupon requested instructions from Tennessee's Department of Labor, who suggested that she forward her report - and the demand that it be suppressed - to the President of the Company.

Dr. Bluhm has considerable experience with Hexane. She testified that peripheral neuropathies are a "fairly common symptom of Hexane exposure," and that a peripheral neuropathy is a disease where basically the sensory muscles in the hands and feet atrophy because the nerve becomes sick.

*She testified unequivocally that Mrs. Primm had none of these symptoms and that there is no evidence that exposure to Hexane produces any pulmonary damage after inhalation.*

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<sup>5</sup>Who was a sort of 'clearing house.'

<sup>6</sup>Possibly an oblique reference to the fact that her daughter-in-law, who was in charge of workers' compensation claims for the employer, was playing a role which may have involved a serious conflict of interest. Exacerbative is the fact that the daughter-in-law, herself, had filed a claim for benefits for "mental stress."

Parenthetically, we have most carefully read the testimony of Dr. Bluhm and find no evidence to justify the criticism directed to her statements.

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**Dr. Jeffrey W. Gray**

Dr. Gray is a neuropsychologist. He holds no medical or science degrees. He practices in Evansville, Indiana and Owensboro, Kentucky. There are no accrediting Boards for his field. He described his function as a neuropsychologist, “to examine and determine how different parts of the brain are functioning.”

The plaintiff was referred to him by Dr. Simmons, from whom he received “some medical records.”

Dr. Gray essentially assumed tht the plaintiff had been exposed to Hexane. He testified, “Dr. Simmons was asking me to evaluate the patient to provide my opinion on whether or not her symptoms were *possibly associated* with her exposure to Hexane.”

He had no experience with Hexane, and had never seen a patient who had been exposed to Hexane.

He said that Hexane is a neurotoxin, one of many “that people are exposed to on a daily basis,” such as gasoline, or glue, or paint or alcohol.

Dr. Gray testified that the referring physician, Dr. Simmons, told him that Mrs. Primm developed frequent headaches and upper body discomfort, poor sleep habits, and a weight loss.<sup>7</sup> He opined that these symptoms were compatible with neurotoxic exposure, and that “she appeared to have rather significant higher cortical residuals.” He testified that the symptoms displayed by Mrs. Primm after 18 months’ duration could be considered permanent, and

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<sup>7</sup>Which, according to the literature, are the side, or adverse, effects of Prozac, as are anxiety and hysteria.

that “the doctor suggested” that she has a significant “neuropsychological impairment.” He further testified that she had a moderate degree of depression, anxiety and ‘some hysteria.’ He described Mrs. Primm as ‘brain-damaged,’ and *within a reasonable degree of medical certainty* that she was injured and such injury resulted in memory loss. Counsel objected to these questions and responses, which should have been sustained, since Dr. Gray is a psychologist, and not a medical or scientific practitioner. He was not qualified to state an opinion which required medical expertise.

Finally, Dr. Gray likened Mrs. Primm’s condition to Alzheimer’s.

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### **The Rule 59 Motion**

The trial judge found, *inter alia*, that the plaintiff had been “exposed to Hexane in unlawful quantities in the workplace for an extended period of time is undisputed and indisputable,” apparently because the Occupational Safety and Health Division of the Department of Labor ‘had cited the employer for exposing the dashboard area to 92.8 parts per million of Hexane when the permissible level is 50 parts per million,’ and “that there is no evidence to rebut this . . . “

The defendants thereupon filed a 59.04 Motion advising that the Department had dismissed the citation, but through oversight this significant evidence was not adduced. The plaintiff, vigorously resisted the Rule 59.04 Motion. A hearing was held, and the motion was denied on the basis that “*this Court’s prior ruling is upheld, as there was evidence to support the finding of the Court.*”

The evidence offered at the Rule 59 hearing was (1) that the State chemists admittedly analyzed the wrong chemical, and (2) that the employer

was in compliance with all standards respecting Hexane, *with the highest levels of exposure more than 50 percent below the permissible standard.*

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### **Conclusion**

(1) *Dr. Simmons'* opinion respecting causation is not of probative value, given his admitted lack of expertise, and his equivocation. [ "I think it's possible that Hexane may have played a part." ]

(2) *Dr. Lisella* found no nerve damage, and thus is in stark contrast to *Dr. Gray*, the neuropsychologist. Since *Dr. Lisella* is a scientist, with a medical education, we think his opinion obviously bears greater weight.

(3) *Dr. Arney* is a psychiatrist, who conceded his lack of knowledge of neurotoxins.

(4) *Dr. Karl* knew nothing of the toxicity of Hexane.

(5) *Dr. Knuckles* is remarkably qualified as an expert in toxicology, by education, training, experience, and practice. He testified that exposure to Hexane did not cause the plaintiff's problems.

(6) *Dr. Weiss*, a neurological surgeon, testified that *Mrs. Primm* "*had no objective physical findings and certainly no neurological problems,*" and that he detected no "memory or lucidity problems."

(7) *Dr. Bluhm* appears remarkably qualified to testify in a chemical exposure case. She holds doctorates in both Medicine and Pharmacology and Toxicology. She was apparently somewhat testy, but (a) given the fact that *Dr. Simmons* was referring *Mrs. Primm* to experts *ad infinitum* [apparently until he found one whose opinion was consonant with his] and (b) given the fact that *Dr. Bluhm* disliked the ethical posture of this case, we see no reason whatever to dilute the probative force of her testimony, which we find most persuasive. The record as a whole tends to support her advice to *Mrs. Primm*. She firmly

testified that Mrs. Primm had no symptomatology attributable to exposure to Hexane.

(8) *Dr. Gray* is a neuropsychologist, not a medical expert, or a toxicologist, or a chemist. His expertise is weak to non-existent and cannot be favorably compared to that of Dr. Lisella, Dr. Knuckles, or Dr. Bluhm. He is the *only* expert who testified as to impairment.

From all of which we find the expert evidence preponderates against the judgment, and preponderates in favor of a finding that the plaintiff failed to carry her burden of proof. Moreover, we find that the Rule 59 Motion was well-taken, and should have been allowed. The proof adduced clarified an erroneous, official report, one of the offices of Rule 59. There is no evidence in the record that the levels of Hexane were higher than permitted by law.

The judgment is reversed and the case is dismissed at the costs of the appellee.

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William H. Inman, Senior Judge

CONCUR:

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Joe C. Loser, Jr., Special Judge

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Lyle Reid, Justice

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**FILED**  
**March 27, 1998**  
**Cecil W. Crowson**  
**Appellate Court Clerk**

BETTY A. PRIMM, ) MARSHALL CIRCUIT  
 ) No. 12410 Below  
Appellee, )  
 ) Hon. Lee Russell  
v. ) Judge.  
 )  
 ) No. 01S01-9705-CV-00120  
KANTUS CORP. & THE YASUDA )  
FIRE & MARINE INS. CO. OF )  
AMERICA, )  
 )  
Appellants. ) Reversed and Dismissed.

JUDGMENT ORDER

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are assessed to the appellee.

IT IS SO ORDERED this 27th day of March, 1998.

PER CURIAM

Reid, J. - Not participating.